

**MEMORANDUM ENDORSEMENT APPROVING SUBMISSION OF TRUSTEE, SIPC,  
AND SEC REGARDING NET EQUITY HEARING**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**SUBMISSION OF TRUSTEE, SIPC, AND SEC REGARDING NET EQUITY HEARING**

Pursuant to this Court's order scheduling adjudication of the "net equity" issue, dated September 16, 2009, Irving H. Picard, as trustee ("Trustee") for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* ("SIPA"), and for Bernard L. Madoff ("Madoff") (collectively, "Debtor"), filed a motion ("Motion") seeking an order (a) upholding the Trustee's determinations denying the claims in question for the securities and credit balances listed on the claimants last BLMIS customer statement, (b) affirming the Trustee's "cash in/cash out" determinations of net equity with respect to each customer claim, and (c) expunging the objections to the Trustee's determinations to the customer claims in question insofar as they

relate to net equity. The Trustee's Motion is scheduled for a hearing before this Court on February 2, 2010 ("Hearing").

At the Court's request, the Trustee, the Securities Investor Protection Corporation ("SIPC"), and the United States Securities & Exchange Commission ("SEC"), make this submission setting forth the manner in which each proposes to approach its argument at the Hearing. While there may have been some similarity to certain of the arguments raised in the memoranda of law filed by each, the parties do not anticipate repetition of argument amongst them at the Hearing. Instead, each will speak to the propriety of the Trustee's net equity calculation from its own perspective, be it fiduciary, administrative, or regulatory. Accordingly, the parties propose the following:

1. Chief counsel to the Trustee, David J. Sheehan, Esq., will provide an overview of the Trustee's net equity calculation and will argue the overarching legal authorities and principles in support of the same. The Trustee anticipates that his counsel will require no more than **40 minutes** to complete his argument.
2. SIPC's General Counsel, Josephine Wang, will provide SIPC's perspective on the Trustee's net equity calculation, based on its 39-year history as administrator of the SIPC Fund. SIPC will require no more than **15 minutes** to complete its argument.
3. Katharine B. Gresham, Assistant General Counsel of the SEC, will provide the views of the governing regulatory body on the matter of the Trustee's net equity calculation. The SEC will require no more than **15 minutes** to complete its argument.
4. Counsel for the various customer claimants will argue in opposition to the Trustee's Motion, in the manner indicated on the **Net Equity Argument Outline** submitted simultaneously herewith by the law firms of Davis Polk, *et al.*, as well as any other counsel or customers that the Court may further permit at the Hearing.
5. The Trustee, SIPC and the SEC would like to reserve no more than **60 minutes** of rebuttal time to be shared amongst them.

Dated: New York, New York  
January 22, 2010

Respectfully submitted,

/s/ David J. Sheehan  
David J. Sheehan  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)

*Attorneys for Defendant Irving H. Picard,  
Trustee for the Substantively Consolidated  
SIPA Liquidation of Bernard L. Madoff  
Investment Securities LLC and Bernard L.  
Madoff*

/s/ Josephine Wang  
Josephine Wang  
General Counsel  
Securities Investor Protection Corporation  
805 15th Street, N.W.  
Suite 800  
Washington, D.C. 20005-2215  
Telephone: (202) 371-8300  
Email: [jwang@sipc.org](mailto:jwang@sipc.org)

/s/ Katharine B. Gresham  
Katharine B. Gresham  
Assistant General Counsel  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549  
Telephone: (202) 551-5148

**Memorandum Endorsement Approving Submission of Trustee, SIPC, and SEC Regarding  
Net Equity Hearing, January 25, 2010**

The submission of the Trustee, SIPC, and SEC regarding the net equity hearing is approved. *See also Memorandum Endorsement Approving Proposed Net Equity Argument Outline Submitted by the Law Firms of Davis Polk & Wardwell, LLP, et al.*

Dated: New York, New York  
January 25, 2010

/s/ Burton R. Lifland  
Hon. Burton R. Lifland  
United States Bankruptcy Judge